

**COLORADO STATE CONTROLLER GUIDANCE
REGARDING
FEDERAL GRANTS MANAGEMENT AND COMPLIANCE WITH
THE 2013 OMB UNIFORM GUIDANCE
(2 CFR PART 200)**

As of February 10, 2016

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GENERAL INFORMATION

The Federal Office of Management & Budget (OMB) promulgated the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, commonly referred to as the “Uniform Guidance,” effective December 26, 2013. All OMB guidance related to Federal Awards is consolidated in Title 2 of the CFR, subtitle A, Chapter II, Part 200. The Uniform Guidance supersedes eight previously issued circulars that individually established administrative requirements (A-102, A-110, A-89), cost principals (A-21, A-87) A-122) and audit requirements (A-133, A-50) for Federal Awards. The Uniform Guidance is available for review at www.ecfr.gov under title 2-Grants and Agreements, chapter 2, part 200, Office of Management and Budget Guidance. The OMB has also provided an extensive set of Frequently Asked Questions (FAQ) available at <https://cfo.gov/wp-content/uploads/2015/09/9.9.15-Frequently-Asked-Questions.pdf>

The Uniform Guidance is intended to make uniform the rules applied to all Federal Awards and to mandate a uniform system of collection and publication of information. Some Federal Agencies have been granted special waivers from the Uniform Guidance on certain rules. For example, the Federal Highway Authority has waived Uniform Guidance Procurement Rules and the Department of Labor has obtained 22 exceptions. In addition, some provisions may be varied by specific reference in the Federal Awards.

The Colorado Office of the State Controller (OSC) issued this OSC Guidance as its interpretation of new and revised requirements that are mandatory for administration of Federal Awards by the State, Departments and Agencies, and Institutions of Higher Education (collectively, “State Agencies”). The purpose of the OSC Guidance is to advise State Agencies of best practices for compliance with the Uniform Guidance, to develop a statewide approach to Uniform Guidance implementation, and to avoid the need for multiple, specific waivers from State Fiscal Rules and Procurement Rules where the Uniform Guidance conflicts with such Rules.

State Agencies are responsible for compliance with the Uniform Guidance as recipients of Federal Awards, and as “Pass-Through-Entities” (PTEs) that provide Subawards to other non-Federal entities to carry out part of a Federal program (2 CFR §200.74). State Agencies must comply with the OSC Guidance. Institutions of Higher Education (“IHEs”) may elect to comply with the OSC Guidance.

State Agencies must also follow existing procedures set forth in the Colorado Revised Statutes, State Procurement Code and Rules, State Fiscal Rules, Executive Orders, and the directives of the State Purchasing Office (SPO). State Agencies are responsible as awardees and as PTEs of Federal Awards to ensure “that the Federal Award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal Award.” (2 CFR §200.331(a)(2)).

This OSC Guidance is presented in same order as the Uniform Guidance, focusing on the changes and additions to OMB policy mandated by the Uniform Guidance.

A. ACRONYMS AND DEFINITIONS

The following capitalized terms are provided for general reference throughout this OSC Guidance, and additional definitions are provided within some of the OSC Guidance sections. For definitions in the Uniform Guidance, see 2 CFR §200.0 to §200.0 99).

CFR – The Code of Federal Regulations.

Closeout - The process by which a Federal Awarding Agency or PTE determines that all applicable administrative actions and all required work of the Federal Award have been completed and takes actions as described in 2 CFR §200.343 Closeout of the Uniform Guidance. (2 CFR §200.16)

Colorado Procurement Code – Articles 101 to 112 of Title 24 of the Colorado Revised Statutes.

CMIA – The Cash Management Improvement Act of 1990, which provides the general rules and procedures for the efficient transfer of funds for Federal financial assistance programs between the Federal government and the states.

Cognizant Federal Agency – The cognizant Federal agency for indirect costs responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR Part 200 on behalf of all Federal Agencies. (2 CFR §200.19)

Contract – A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal Award. The general term “Contract” is distinguished from the legal instrument employed when the substance of the transaction meets the definition of a Federal Award or Subaward. (2 CFR §200.22), which is instead called a Grant Agreement. (2 CFR §200.22)

Contractor – An entity that receives a Contract. (2 CFR §200.23)

Cooperative Agreements – An agreement where there is substantial, continuing involvement between the Federal Awarding Agency or PTE and a non-Federal entity in carrying out the activity contemplated by the Federal Award. A Cooperative Agreement is not considered a type of Grant. (2 CFR §200.24)

CRS – The Colorado Revised Statutes.

Federal Agency - An agency, as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). (2 CFR §200.35)

Federal Awarding Agency - The Federal Agency that provides a Federal Award directly to a non-Federal entity. (2 CFR §200.37)

Federal Award – An award of Federal financial assistance or a commitment for cost-reimbursement under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. A Federal Award does not include other contracts that a Federal Agency uses to buy goods or services from a Contractor. (2 CFR §200.38)

Grant Agreement – A legal instrument of financial assistance between a Federal Awarding Agency or Pass-Through Entity (PTE) and a non-Federal entity that is consistent with 31 USC 6301, 6304. The principal purpose of the grant agreement is to transfer anything of value from the Federal Awarding Agency or a PTE to a non-Federal entity to carry out a public purpose authorized by a law of the United States; and not to acquire property or services for the direct benefit of the Federal Awarding Agency or PTE. A Grant Agreement does not include an agreement that provides only direct Federal cash assistance to an individual (a beneficiary), a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. (2 CFR §200.51)

Micro-purchase – A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1. The Micro-purchase threshold periodically is adjusted for inflation. Currently this amount is \$3,000 (\$2,000 for construction projects subject to the Davis Bacon Act). (2 CFR §200.67)

Non-Federal Entity – A state, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a Federal award as a Recipient or Subrecipient. (2 CFR §200.69)

OMB - The Executive Office of the President, Office of Management and Budget.

OSC Guidance – This Colorado Office of the State Controller (OSC) Guidance to State Agencies regarding compliance with the 2013 OMB Uniform Guidance (2 CFR Part 200), as amended.

Pass-Through Entity (PTE) – A Non-Federal Entity that provides a Subaward to one or more Subrecipients to carry out part of a Federal program. For State Agencies, the PTE is a State program that receives a Federal Award and provides a Subaward to one or more Subrecipients to carry out part of a Federal program. Examples of State programs for the Colorado Department of Human Services include Child Welfare Services, Refugee Services, and Substance Use Disorder Services. (2 CFR §200.74)

Period of Performance – The time during which the non-Federal Entity may incur new obligations to carry out the work authorized under the Federal Award. The Federal Award must state the start and end dates of the Period of Performance. (2 CFR §200.77)

Project Cost – Total allowable costs incurred under a Federal Award and all required cost sharing and voluntary committed cost sharing, including third-party contributions. (2 CFR §200.83)

Recipient - A non-Federal entity that receives a Federal Award directly from a Federal Awarding Agency to carry out an activity under a Federal program. The term "Recipient" does not include Subrecipients. (2 CFR §200.86)

State – The State of Colorado.

State Agency – An executive department, institution, including institutions of higher education except as otherwise provided in CRS 24-30-202(13)(b), or other agency of the State.

State Grant – A State grant as defined in CRS §24-101-301 (10.5)(b).

Subaward – An award provided by a PTE to a Subrecipient for the Subrecipient to carry out part of a Federal Award received by the PTE. A Subaward does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program. The form of agreement for a Subaward is a Grant. (2 CFR §200.92)

Subrecipient – A non-Federal entity that receives a Subaward from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. (2 CFR §200.93).

Uniform Guidance - The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

B. GENERAL PROVISIONS

Applicability – The terms and conditions of Federal Awards flow down to Subrecipients unless a particular section of 2 CFR §200.101 or the terms and conditions of the Federal Award specifically indicate otherwise. Users of this Guidance should consult the table in 2 CFR §200.101 for the applicability of the Uniform Guidance to the several types of Federal Awards.

Effective/applicability date (2 CFR §200.110)

- December 26, 2014: Uniform Guidance applicable to all Federal Awards issued direct to a Recipient after this date.
- July 1, 2015: Uniform Guidance applicable for PTEs and Subrecipients to new funds provided after this date on State-administered Federal Awards, including new funds provided under pre-existing Federal Awards.
- July 1, 2016: Uniform Guidance procurement rules changes become applicable to State-administered Federal Awards, however Pass-Through-Entities must document their intention to take advantage of the 2-year grace period. Uniform Guidance procurement rules will be effective for the State of Colorado on July 1, 2017 (see Procurement Standards below).

Conflict of Interest – A Non-Federal Entity must disclose in writing any potential conflict of interest to the Federal Awarding Agency or Pass-Through Entity in accordance with applicable Federal awarding agency policy. (2 CFR §200.112)

Mandatory Disclosures – A Non-Federal Entity must disclose, in a timely manner, in writing to the Federal Awarding Agency or Pass-Through Entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. If the required information is not disclosed, then State Agencies or Federal Awarding Agencies may impose remedies that include suspension or debarment. (2 CFR §200.113)

C. PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS

This section (2 CFR §§200.200-212) applies primarily to Federal awarding agencies.

Use of Grant Agreements, Cooperative Agreements, and Contracts – The Federal Awarding Agency or Pass-Through Entity must decide on the appropriate instrument for the Federal Award. The choice is limited to grant agreements, cooperative agreement, or contracts, as well as fixed amount awards when certain conditions are met. (2 CFR §200.201)

Federal awarding agency review of risk posed by applicants – A Federal Awarding Agency must comply with the guidelines on government wide suspension and debarment in 2 CFR Part 180, and must require Non-Federal Entities to comply with these provisions. (2 CFR §200.205)

2 CFR §180 OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

Applicability - 2 CFR §180 provides guidance for Federal agencies on the governmentwide debarment and suspension system for non-procurement programs and activities. (2 CFR §180.5)

Covered Transaction – A Covered Transaction is a non-procurement or procurement transaction that is subject to the prohibitions of 2 CFR §180. It may be a transaction at the primary tier, between a Federal agency and a person, or a lower tier, between a Participant in a covered transaction and another person. All Non-procurement Transactions are Covered Transactions. (2 CFR §§180.200 and 210)

Participant – A Participant is any person who submits a proposal for or who enters into a covered transaction, included an agency or representative of a Participant. For a Grant from a Federal agency to a State Agency, the State Agency would be considered a Participant. (2 CFR §180.980)

Non-procurement transaction – Any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

1. Grants
2. Cooperative agreements
3. Scholarships
4. Fellowships
5. Contracts of assistance
6. Loans
7. Loan guarantees
8. Subsidies
9. Insurances
10. Payments for specified uses
11. Donation agreements (2 CFR §180.970)

Procurement contracts that are included as covered transactions – Covered transactions include procurement contracts for goods or services if any of the following applies:

1. The contract is awarded by a Participant in a Non-procurement Transaction that is Covered Transaction and the amount of the contract is expected to equal or exceed \$25,000, or
2. The contract requires the consent of an official of a Federal agency.

Responsibilities of Participants – Responsibilities include the following:

1. When a Participant enters into a Covered Transaction with another person at the next lower tier, the Participant must verify that this person is not excluded or disqualified by:
 - a. Checking the Excluded Parties List System (EPLS)
 - b. Collecting a certificate from that person (2 CFR §180.300)
2. Participant may not enter into a Covered Transaction with an excluded person, unless the Federal agency responsible for the transaction grants an exception under 2 CFR §180.135. (2 CFR §180.305)
3. Before entering into a Covered Transaction with a Participant at the next lower tier, the Participant must pass the requirement to comply with 2 CFR §180 to each person with whom the Participant enters into a Covered Transaction at the next lower tier. (2 CFR §180.330)

Excluded Parties List System – This is now referred to System Award Management (SAM) Registration and is available at www.sam.gov.

Suspension and Debarment – Subparts F, G, and H of 2 CFR §180 include principles and direction for situations involving suspension and debarment.

D. POST FEDERAL AWARD REQUIREMENTS STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

Statutory and National Policy Requirements – A Non-Federal Entity must comply with all requirements of the Federal Award, including the provisions of Federal Funding Accountability and Transparency Act (FFATA). (2 CFR §200.300)

Performance Measurement – Recipients must:

1. Relate financial data to performance accomplishments of the Federal Award
2. Provide cost information to demonstrate cost effective practices. (2 CFR §200.301)

Internal Controls - Recipients and Subrecipients must establish and maintain effective internal control over the Federal Award that provides reasonable assurance that the non-Federal entity is managing the Federal Award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal Award. (2 CFR §200.303)

The Office of the State Controller has adopted the “Standards for Internal Control in the Federal Government” (Green Book) as the State standard for internal controls. State Agencies must follow the Green Book for internal controls. See State Controller Policy entitled “*Internal Control System*.”

Internal controls means a process, implemented by a Non-Federal Entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (a) Effectiveness and efficiency of operations;
- (b) Reliability of reporting for internal and external use; and
- (c) Compliance with applicable laws and regulations (2 CFR §200.61).

Payment and Advance Payment - The State PTE is not required to make advance payments pursuant Federal Awards passed through to Subrecipients. Pursuant to 2 CFR §200.305(a), state payments are governed by Treasury-State CMIA agreements and the default procedures codified at 31 CFR Part 205 for rules on efficient transfer of Federal funds. The OSC and State fiscal rules generally prohibit advance payments; however, Fiscal Rule 2-2 8.3.4 allows an exception for Federal grants awarded by the State to subgrantees in compliance with Federal requirements that may be included in the Federal Award itself. (2 CFR §200.305)

Timing of Payments - The State PTE is not required to make payments for Federal Awards within 30 calendar days. Pursuant to 2 CFR §200.305(a), State payments are governed by Treasury-State CMIA agreements and the default procedures codified at 31 CFR §205 for rules on efficient transfer of Federal funds.

Procurement Standards (2 CFR §§200.317 to 200.326) - The State of Colorado, by and through the Office of the State Controller, has elected to postpone application of new provisions in the Uniform Guidance applicable to the State's Procurement Code and Rules, as permitted, until July 1, 2017.

Procurements by States— State Agencies must follow the Procurement Code when procuring property and services under a Federal award. (2 CFR §200.317) Each State Agency should continue to follow its own policies regarding grants. The OSC will issue a policy regarding grants after the 2016 legislative session.

Standards of Conduct – A Non-Federal Entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. In addition, a Non-Federal Entity that has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, must also maintain written standards of conduct covering organizational conflicts of interest. (2 CFR §200.318) State Agencies shall follow the OSC's policy entitled, "*Conflicts of Interest*."

Period of Performance - The Uniform Guidance requires the following:

1. PTE must include the Subrecipient's period of performance (start and end date) in the Subaward. (2 CFR §§200.309, 331(a)(v))
2. The period of performance must be based on the State Agency's and Subrecipient's estimated project schedule, including processes required to ensure all Federal requirements have been satisfied. If a Federal Award allows for performance through multiple phases, the PTE may apply a separate period of performance (start and end dates) for each project phase. The PTE should notify the Federal Awarding Agency of these different phase dates.
3. Project end date may be adjusted if agreed to by the Federal Awarding Agency, which may also allow no-cost extensions of the period of performance. However, the extension of a project end date would have to reflect a delay in the project which is beyond the control of the PTE and Subrecipient, or be based on changes to the Grant Agreement which would have an impact on the project end date (e.g. change in project scope).
4. A PTE and Subrecipient may charge to the Federal Award only allowable costs incurred during the appropriate period of performance, unless otherwise provided in the Federal Award.

Competition – All procurement transactions must be conducted in a manner providing full and open competition. A Non-Federal Entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic

preference. A non-Federal Entity must have written procedures for procurement transactions. (2 CFR §200.319)

Methods of Procurement to be Followed – This section applies to Non-Federal Entities, which for this section includes Subrecipients of State Agencies. There are five methods of procurement including micro-purchases (up to \$3,000), small purchases (up to \$150,000), sealed bids, competitive proposals, and non-competitive proposals. (2 CFR §200.320)

Contract Provisions – State agencies must append to Federally funded Grant Agreements the Supplemental Provisions for Federal Awards provided at Appendix A. In addition, State Agencies must modify the standard OSC Grant Agreement Template to include the Additional Contract Provisions for Federal Award Grants provided at Appendix B. (2 CFR §200.326)

Financial Reporting – The Federal Awarding Agency may solicit only the standard OMB-approved governmentwide data elements for collection of financial information, to be reported no less frequently than annually and no more frequently than quarterly except in unusual circumstances. (2 CFR §200.327)

Subrecipient and Contractor Determination (2 CFR §200.330)

Subrecipients – A Subrecipient has the following characteristics (2 CFR §§200.93 and 200.330):

1. Determines who is eligible to receive what Federal assistance,
2. Has its performance measured against whether the objectives of the Federal program were met,
3. Has responsibility for programmatic decision-making authority,
4. Is responsible for adherence in applicable Federal program requirements specified in the Federal Award, and
5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Contractors – A Contractor has the following characteristics (2 CFR §§200.23 and 200.330):

1. Provides the goods and services within a normal business operation,
2. Provides similar goods and services within a normal business operation,
3. Normally operates in a competitive environment,
4. Provides goods and services that are ancillary to the operation of the Federal program, and
5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

Determination by State Agencies - State Agencies must exercise judgment in the process of determining whether an entity is a Subrecipient or Contractor. The

substance of the relationship is more important than the form of the agreement. To decide, State Agencies should use a “Subrecipient vs Contractor Determination Tool,” and use the tool to document the State Agency’s determination. The OSC offers such a tool as an Excel file embedded at Appendix C, and available on the OSC’s website.

Form of Agreement – A State Agency must use a Grant Agreement for Subrecipients and a contract for Contractors. State templates for both are available on the OSC’s website.

Requirements for Pass-Through Entities (2 CFR §200.331)

Responsibilities of State Agencies – State Agencies have the following responsibilities to Subrecipients:

1. Ensure Subrecipients meet expenditure targets to maximize the use of program funding.
2. Ensure Subrecipients meet performance targets tied to funding objectives.
3. Require Subrecipients to submit regular progress reports.
4. Require Subrecipients to provide explanations of variance in program objectives and fund maximization.
5. Sanction Subrecipients, as appropriate, if program objectives are not met.
6. Hold Subrecipients responsible for compliance with applicable federal, state and local program requirements, rules, policies and guidance.
7. Provide technical assistance and training to Subrecipients regarding program requirements.
8. Monitor Subrecipient entities for programmatic and fiscal compliance with applicable program requirements.

As noted in 2 CFR §200.330(b)(5), Contractors are not subject to compliance requirements of the Federal program. State Agencies’ responsibilities to Contractors are to comply with Colorado statutory requirements, including those related to solicitations, fair and reasonable pricing, and reasonable and necessary expenditure.

Risk Assessment - A Pass-Through Entity must evaluate each Subrecipient’s risk of noncompliance with Federal statutes, regulations, and terms and conditions of the Subaward for purposes of determining the appropriate Subrecipient monitoring (2 CFR §200.331(b)). The PTE must administer the Uniform Guidance risk assessment only after selection of Subrecipients is complete (i.e. after the Subrecipient has met all criteria for receiving the Subaward). The Uniform Guidance risk assessment is not part of the process for determining which entities will receive Subawards. The Subrecipient risk assessment does not apply to State funds. However, the OSC encourages the use of the principles of this Guidance when a program is evaluating State funded grantees.

A list of “Sample Risk Factors” is provided at Appendix D, and a “Sample Risk Assessment Form” is provided at Appendix E. When one State Agency is the PTE to another State Agency that is the Subrecipient, the OSC will prepare a Statewide Risk

Assessment applicable to all State Agency programs to meet the Uniform Guidance requirement.

Subrecipient Risk Assessment Considerations – Additional considerations for conducting the risk assessment are as follows:

1. A Subrecipient risk assessment is a quantitative and/or qualitative determination of the potential for a Subrecipient's non-compliance with requirements of a Federal Award.
2. The Federal intention in requiring a Subrecipient risk assessment is to determine the appropriate amount of Subrecipient monitoring required of the PTE; therefore, the risk assessment should be performed before a Subrecipient performs any work.
3. Risks can vary according to a variety of attributes specific to each program (e.g., entity type, grant terms, performance measures, etc.). Each risk assessment developed by a State Agency should contain the Primary Risk Categories in the table below, plus any additional attributes defined by the program. The Appendix includes additional questions for each of the primary risk categories in the table.
4. State Agencies should use a "Risk Assessment Tool" to determine a Subrecipient's risk level and the appropriate level of monitoring of each Subrecipient (High, Medium or Low). State Agencies should use this tool to document the State Agency's determination. The Appendix includes questions used in the Risk Assessment Tool (Sample Risk Assessment Form). A Risk Assessment Tool is included as an Excel file embedded at Appendix C, and available on the OSC's website.
5. State Agencies should develop a risk assessment policy that indicates the level and type of monitoring that is required for each risk level. Because of the wide variety of Grants awarded in the State, the OSC has not developed a mandatory statewide policy.
6. If risk factors associated with a Subrecipient change after entry into a Grant Agreement, the PTE must adjust the risk assessment, and adjust the monitoring requirements for that Subrecipient.

Table Primary Risk Categories (<i>MUST be part of the Subrecipient risk assessment</i>)	
Primary Risk Category	Description
Experience Consideration	The factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or Grants.
Monitoring and Audit Result Consideration	The factors associated with the results of the Subrecipient's previous audits or monitoring visits,

	including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct Federal funding. Include Audit results if Subrecipient receives a Single Audit, where the specific award being assessed was selected as a major program.
Operation Consideration	The factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
Financial Consideration	The factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
Internal Control Consideration	Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud, and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
Impact Consideration	The factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.

Subrecipient Monitoring - State Agencies, as PTEs, must evaluate and monitor each Subrecipient's compliance with statutes, rules and audit requirements to confirm that Subrecipient activities relate to achievement of performance goals, and consider initiating enforcement actions against non-compliant Subrecipients. (2 CFR §200.331(d) and (h)). PTE monitoring of the Subrecipient must include:

1. Reviewing financial and programmatic reports required by the PTE,
2. Following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal Award,
3. Issuing a management decision for audit findings pertaining to the Federal Award provided to the Subrecipient from the PTE as required by 2 CFR §200.521.
4. Reviewing State-negotiated cost allocation plans/indirect cost rates.

Methods of Subrecipient Monitoring - After completing the Subrecipient risk assessment, the PTE may utilize a variety of tools to perform Subrecipient monitoring. The State program must define the methods and frequency of monitoring based on the risk assessment, specific attributes associated with the particular Subrecipient, and program resources. The following list includes various methods that State Agencies may use to monitor Subrecipients. The list is not exclusive, and State Agencies should select the monitoring method(s) according to their program's discretion and professional judgment. (2 CFR §200.331)

Review of Programmatic, Performance and Financial Reports

Review reports submitted by the Subrecipient for programmatic, performance and financial progress and compliance.

Audit Review

Review Subrecipient's audits in areas such as compliance, financial stability, disclosures of related party transactions, etc. The PTE should review the Schedule of Expenditures of Federal Awards (SEFA) to ensure that the grants that were passed through are correctly reported on the SEFA. This review should include: identifying the correct amount of Federal funds passed through, the CFDA number and grant name, the associated Federal agency and PTE. This review should determine whether the Subrecipient's records are accurate and complete or if adjustment is needed.

On-Site Monitoring

Conduct random inspections of the Subrecipient's records at the Subrecipients location.

Desk Reviews

Conduct random inspections of the Subrecipient's records by requesting the records are sent to the program. Review occurs at the program location.

Measuring Customer Satisfaction

Utilize methods to measure customer satisfaction as it relates to the compliance and performance of the contracted goods/services.

Closeout Audits

Conduct a formal, written closeout at the completion stage of a contract so that important contract elements are not overlooked.

Post-Contract Reviews

Conduct an evaluation at the end of the contract period to evaluate the Subrecipient's performance as it relates to the effectiveness of the program's method(s) of monitoring.

Performance Reporting - 2 CFR §200.331(d)(1) requires financial and programmatic reporting by Subrecipients to Pass-Through Entities. Such reporting should be formally documented. Performance reports compare actual accomplishments to Federal Award objectives; unit cost computations if useful; and performance trend data and analysis if informative. If objectives are not met, the report should include reasons for slippage and an analysis of any cost overruns or high unit costs, if appropriate.

PTE's Performance Reports must include, at minimum:

1. Identity of the Subrecipient subject to the monitoring;
2. Identity of the Federal Award(s) or State Grants received by Subrecipient (including, as appropriate, the Federal Awarding Agencies);
3. Relevant monitoring cycle (e.g, the State of Federal fiscal year);
4. State Agency staff responsible for monitoring the Subrecipient;
5. Program description;

6. Risk assessment for the Subrecipient and explanation of the criteria used to assign risk;
7. Summary of previous Performance Report;
8. Any corrective action plan implemented or recommended.
9. Evaluation of Subrecipient's performance, including the results of monitoring of the Subrecipient by the PTE.

Authorized Enforcement Actions - PTEs must consider taking enforcement actions if monitoring reveals Subrecipients are out of compliance with the Federal statutes, regulations or the terms and conditions of a Federal Award. (2 CFR §200.331(h))

Remedies for Noncompliance - PTEs may impose, as appropriate, enforcement actions on Subrecipients if noncompliance cannot be remedied by imposing additional conditions. State Agencies should be aware that as the initial recipients of Federal Awards, they are held primarily responsible for adequate performance by Subrecipients. Possible remedies that PTEs may pursue for Subrecipient noncompliance include:

1. Temporarily withholding cash payments pending correction of the deficiency.
2. Denying both uses of funds and any applicable matching credit for all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspending or terminating the Federal Award.
4. Recommending Federal Awarding Agency initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal Awarding Agency regulations.
5. Withholding further Federal Awards for the project or program.
6. Pursuing other remedies that may be legally available. (2 CFR §200.338)

Termination - The Federal Award may be terminated in whole or in part:

1. By the Federal Awarding Agency or PTE if the non-Federal entity fails to comply with the terms and conditions of a Federal Award.
2. By the Federal Awarding Agency or PTE for cause.
3. By the Federal Awarding Agency or PTE with the consent of the Subrecipient, in which the two parties must agree upon the termination conditions.
4. By the Subrecipient upon sending the Federal Awarding Agency or PTE written notification indicating the reasons for termination. (2 CFR §200.339)

Closeout - requires Subrecipients to submit all reimbursement requests, and financial, performance and other reports within 90-days after the end-date for performance (2 CFR §200.343):

1. The PTE must submit, no later than 90 calendar days after the end date (the Closeout period), all financial, performance, and other reports to the Federal Awarding Agency as required by the terms and conditions of the Federal Award. To meet this deadline, it may be advisable to require the Subrecipient to submit

its documentation to the State Agency earlier than 90 days after the relevant end date.

2. All final reimbursements by the PTE must be made within the 90 day Closeout period following the end date.
3. After the 90 day Closeout period is over, the Federal Awarding Agency has one year to close out the Federal Award in their system.
4. The Closeout of a Federal Award does not affect the right of the Federal Awarding Agency or PTE to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

Record Retention Period – A period of three years from the date of submission of the final expenditure report for a Federal Award or Subaward or, for Federal Awards or Subawards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or PTE in the case of a Subrecipient. Federal Awarding Agencies and PTEs shall not impose any other record retention requirements upon non-Federal entities, except as specifically provided in 2 CFR §200.333. Exceptions may extend retention periods for records relating to ongoing litigation, and acquired real property and equipment, among other things. (2 CFR §200.333)

E. COST PRINCIPLES

Overall - OMB Circular §§200.400-475 contain the OMB cost principles that must be used in determining the allowable costs of work performed by a Non-Federal Entity under a Federal Award. Instructions related to developing and negotiating indirect cost rates or facilities and administrative cost rates are presented in separate appendices (Uniform Guidance Appendices III – VII). The principles are designed to provide that Federal Awards bear their fair share of costs recognized under these principles, except where restricted or prohibited by statute.

Allowability of Costs (2 CFR §200.403) - The fundamental requirement of allowability applies before charging any costs to the Federal Awards as listed below. Costs must:

1. Be necessary, reasonable and allocable for the performance of the Federal Award.
2. Conform to any limitations or exclusions included in the Uniform Guidance or the Federal Award.
3. Be consistent with organizational policies and procedures uniformly applied to Federal and non-Federal activities.
4. Be accorded consistent treatment. A cost may not be assigned to a Federal Award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal Award as an indirect cost.
5. Be in accordance with generally accepted accounting principles (GAAP).
6. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed program.
7. Be adequately documented using sound management techniques.

Administrative Costs as Direct Costs (2 CFR §200.413) - Salaries of administrative & clerical staff are normally indirect costs, unless:

1. Such salaries are integral to the project
2. Individuals can be specifically identified
3. Such salaries are explicitly included in the budget or otherwise approved; and
4. Such costs are not otherwise recovered

Indirect (F&A) Costs - As PTEs, State Agencies must include in Grant Agreements the proper terms and conditions for determining allowability of indirect cost rates. A rate is required if a Recipient or Subrecipient has a Federal Award for direct cost reimbursement, has more than one funding source, and wishes to request reimbursement of indirect costs. There are three options for recognizing indirect costs (2 CFR §200.414):

1. Use an existing, Federally-approved indirect rate between the Subrecipient and the cognizant Federal agency, if one exists,
2. Use a rate negotiated between the PTE and the Subrecipient, or
3. Use the 10% de minimis rate as allowable under 2 CFR §200.414.

Claiming reimbursement for indirect costs is never mandatory, but generally any Recipient or Subrecipient that receives less than \$35 Million in direct Federal funding per year may elect to charge the de minimis indirect costs rate of 10%, which it may use indefinitely. (2 CFR §200 Appendix VII) PTEs are prohibited from requiring an eligible Subrecipient to accept less than the de minimis rate for indirect costs (2 CFR §200.331 FAQ #6). However, State PTEs are also not required to negotiate an indirect cost rate with Subrecipients who wish a rate higher than the de minimis 10%. PTEs should confirm that the Subrecipient has some indirect costs, but are not required to determine the amount prior to allowing use of the de minimis rate.

For entities that elect to use the de minimis rate of Modified Total Direct Costs:

1. Costs must be consistently charged as either indirect or direct costs.
2. Once this methodology is elected it must be used consistently for all Federal Awards until such time as the non-Federal entity chooses to negotiate for a rate. If a Subrecipient negotiates an indirect cost rate that is not the de minimis rate (a higher rate), the negotiated rate shall apply to that particular that program only. If that same Subrecipient enters into a Grant Agreement for a different program with the same State Agency or another State Agency, the de minimis rate shall apply, unless that the Subrecipient negotiates an indirect cost rate for that other program. The negotiated rate is program-specific.
3. Modified Total Direct Cost (2 CFR §200.68) equals all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award).

2 CFR §200.414(g) provides that any non-Federal entity that has a current, federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years.

Required Certifications - Annual and final fiscal reports or vouchers requesting payment under Federal Awards must include a certification, signed by an official who is authorized to legally bind the PTE and Subrecipient. Cost allocation plans and indirect cost rate proposals must also be certified. In the case of Subrecipients that are not governmental entities, the certifying officer must be someone no lower than a vice president or chief financial officer. (2 CFR §200.415)

Cost Allocation Plans - To recover indirect costs on Federal Awards, a Recipient or Subrecipient must have either a cost allocation plan or an indirect cost rate proposal. (2 CFR §200.416)

Cost Allocation Plans (CAPs) and indirect cost rate proposals (IDCs & CRPs) are the means by which costs are identified in a logical and systematic manner for reimbursement under Federal Awards and Grant Agreements. They are documents that identify, accumulate, and distribute allowable direct and indirect costs to benefiting activities.

1. **Statewide Cost Allocation Plan (SWCAP):** Centralized costs such as Office of the State Controller, DHR, State Purchasing, State Archives, State Architect, Treasury, and State Budget Office (OSPB) are not within the scope of the Federal Awards that are performed within the individual operating agency/departments. Therefore, SWCAP is a process for identifying centralized service costs and assigned to the benefitted user agencies in a reasonable and consistent basis using allocation basis that is based on service/benefit.
2. **Public Assistance Cost Allocation Plan (PACAP):** Prepared by State Agencies that are responsible for the administration of Public Assistance Programs. A PACAP is prepared as a narrative document showing how costs are accumulated, and assigns allocation methodologies and allocates costs to the benefitting objectives/programs.
3. **Indirect Cost Rate Proposal (ICRP):** Commonly used by State Agencies that manage few programs or have many Grants that are not Public Assistance Programs. ICRP rates represent a 'one size fits all' approach.

The Uniform Guidance generally updates and implements new standards for documentation of costs, applicable to State Agencies as Federal Award Recipients, and with which Subrecipients must comply as well.

There are several selected items of cost that are revised in the Uniform Guidance, such as compensation for personal services and depreciation. Some items are added such as collection of improper payments, exchange rates and intellectual property. The Uniform Guidance has eliminated some items (such as the allowability of specific staff

positions (deans), communication costs, labor relations cost, meetings and foreign travel) because these costs are covered elsewhere or are outdated.

Compensation – Personal Services - The Uniform Guidance provides that labor records must be supported by a system of internal control. Salaries and wages must be based on records that accurately reflect the work performed. These records must be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated. (2 CFR §200.430(i))

F. AUDIT REQUIREMENTS

Audit Requirements - The Uniform Guidance increases the threshold for requiring single audits from \$500,000 to \$750,000. State Agencies must consider alternative methods for monitoring those Subrecipients that fall under the single audit threshold of \$750,000. (2 CFR §200.501)

Auditee Responsibilities - State Agencies must comply with auditee responsibilities for audits by Federal Agencies, outside auditors, and the Office of the State Auditor. The Auditee must:

1. Prepare appropriate financial statements, including the SEFA
2. Promptly follow-up and take corrective action on all audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with 2 CFR §200.511. (2 CFR §§200.508 and 511)

Federal Agencies and Auditor Responsibilities – The Uniform Guidance also includes sections for Federal Agencies responsibilities (2 CFR §200.513) and for Auditors (2 CFR §200.515).

Proposed Changes to the Data Collection Form (SF-SAC) - On December 9, 2015, OMB published a [Federal Register \(FR\) notice](#) containing proposed changes to the Data Collection Form (SF-SAC) and its instructions. The more significant changes to the form can be found in the “What’s New” section of the instructions. This revised SF-SAC will be used to report audit results, audit findings and questioned costs as required by 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (the Uniform Guidance). It will be used for audits covering fiscal years beginning on or after December 26, 2014 (i.e., FY 2016 single audits for states).

Appendices – The Uniform Guidance includes 11 appendices to provide further details to implement 2 CFR Part 200.

Appendix A - Supplemental Provisions for Federal Awards
Subject to
The Office of Management and Budget Uniform Administrative Requirements,
Cost Principles, and Audit Requirements for Federal Awards (“Uniform
Guidance”),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
 - 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
 - 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing

guidance from relevant Federal agencies or the Colorado State Controller.

- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
 - 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
 - 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
 - 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
 - 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
 - 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor

with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will

take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

- 4.2 Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 4.3 Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 4.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 4.5 Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 4.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.

1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. **Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
8. **Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

10. Performance Measurement

The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Appendix B - Additional Contract Provisions for State-Issued Federal Award Grants

The following clauses should be added to or replace the referenced sections of the Model State Grant Template as appropriate when the granting agency serves as a Pass-Through Entity for a Federal Award.

For inclusion in the “Term” section of State Grant Agreements:

Length of Term

This Agreement shall commence on the Effective Date, and funds shall be expended by _____ (the “End Date”), as detailed under the Project Schedule in **Exhibit:** _____. If the Work shall be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit:** _____. The Agreement shall terminate [____] months following the Effective Date, unless sooner terminated or extended with by a formal Agreement amendment executed by the Parties.

For inclusion in the “Payments” section of State Grant Agreements:

Matching Funds

The Subrecipient shall provide matching funds as provided in **§8.A.** and **Exhibit** _____. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Subrecipient’s obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Subrecipient and paid into the Subrecipient’s treasury or bank account. The Subrecipient represents to the State that the amount designated “Subrecipient’s Matching Funds” in **Exhibit C** has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. The Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Subrecipient. The Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency’s laws or policies.

Reimbursement of Subrecipient Costs

The State shall reimburse the Subrecipient’s allowable costs, not exceeding the maximum total amount described in **Exhibit** _____ and **§8.** The State shall reimburse the Subrecipient for the federal share of properly documented allowable costs related to the Work after review and

approval thereof, subject to the provisions of this Agreement and **Exhibit ____**. However, any costs incurred by the Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Allowable costs shall be:

- i. **Reasonable and Necessary.** Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. **Net Cost.** Actual net cost to the Subrecipient (i.e. the price paid minus any items of value received by the Subrecipient that reduce the cost actually incurred).

Close Out.

The Subrecipient shall close out this Grant within 90 days after the End Date. Grant close out entails submission to the State by the Subrecipient of all documentation defined as a Deliverable in this Agreement, and Subrecipient's final reimbursement request. The State shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by [Federal awarding agency] within 1 year and 90 days after the End Date due to Subrecipient's failure to submit required documentation that the State has requested from the Subrecipient, then the Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation has been submitted and accepted.

Erroneous Payments.

The closeout of a federal award does not affect the right of [Federal Awarding Agency] or [PTE] to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

For inclusion in the "Reporting - Notification" section of State Grant Agreements:

Performance and Final Status.

Party shall submit, all financial, performance, and other reports to State no later than ____ calendar days after the End Date or sooner termination of this Agreement containing an Evaluation and Review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

Violations Reporting

Subrecipient must disclose, in a timely manner, in writing to the State and to the Federal Awarding Agency responsible for issuance of the Federal Award, all violations of Federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Grant. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

For inclusion in the “Grantee Records” section of State Grant Agreements:

Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) for a period of three years following the date of submission to the State of the final expenditure report, or if this Grant is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to the Grant starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

For inclusion in all Grants and Contracts:

Conflicts of Interest

Subrecipient shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Subrecipient’s obligations hereunder. Such a conflict of interest would arise when a Subrecipient’s employee, officer or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or receives a tangible personal benefit from Subrecipient’s receipt of the Federal Award and/or entry into this Grant Agreement. Officers, employees and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Subrecipient acknowledges that with respect to this Grant Agreement, even the appearance of a conflict of interest is harmful to the State’s interests. Absent the

State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations to the State hereunder. If a conflict or the appearance of a conflict exists, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict of interest exists, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant Agreement.

Appendix C – Subrecipient Determination Tool and Risk Assessment Calculation Tool

These tools are available as embedded files below, and on the OSC website.



Subrecipient versus
Contractor Determina



Risk Assessment
Calculation Tool v1.xl

Appendix D - Sample Risk Factors

Experience Considerations

- Is the Subrecipient new to operating or managing state and/or Federal funds (has it done so within the past three years)?
- Has the organization administered programs similar to the current Federal Award?
- How many years has the organization been in existence?

Monitoring and Audit Result Considerations

- Have more than three funding cycles passed since the Subrecipient has had an on-site project/grant review?
- Were there non-compliance issues in any prior reviews? What were the number and extent of issues in prior reviews?
- Has it been more than one year since the Subrecipient received a single audit?
- Has it been more than one year since the program was audited as a major program? If no, what were there findings? What were the number and extent of findings/violations in prior visits, and does the Subrecipient have a corrective action plan for correcting the finding?
- Does the Subrecipient receive an audit under the Single Audit Act/Uniform Administrative Requirements, 2 CFR §200, subpart F?
- Does the Subrecipient receive an annual financial statement audit under Generally Accepted Auditing Standards (GAAS)?
- Has the Subrecipient previously provided all deliverables under its grants on time and as described in its statement of work?
- Have any other entities (program offices, auditors, staff employed by the Subrecipient, etc.) alerted the program of potential risk areas?
- Does the Subrecipient's management exhibit a lack of receptiveness and responsibility to implementing program recommendations?

Operation Considerations

- Does the Subrecipient have a time and accounting system to track effort by cost objective?
- Are time distribution records (timesheets or personnel activity reports) maintained for all employees when their effort cannot be specifically identified to a particular program cost objective? If no, does the Subrecipient have an approved alternative system to account for time distribution and when was it adopted?
- Does the Subrecipient have a time and effort reporting system in place to account for 100% of all employees time with a breakdown of the actual time spent on each funding project?
- How many total FTEs does the Subrecipient have?
- Does the Subrecipient serve as a fiscal agent for another State Agency that will complete the actual work on the grant?
- Does the Subrecipient have employee fidelity bond/insurance coverage for all its employees that handle cash?
- Number of projects identified as Federally inactive within the last 3 years.

- In the past, has the Subrecipient been untimely in the submission of requests for reimbursements, amendments, revisions, change orders, minor contract revisions, or any other significant submissions?
- How many locations or units does the Subrecipient have?
- Is the Subrecipient's transaction recording and account balance maintenance complex in nature and require a significant amount of professional judgment and expertise?
- Is the Subrecipient's organizational structure centralized or decentralized?
- Has the Subrecipient recently implemented a new software system significant to the organization's operations?
- Is the Subrecipient sub-awarding any portion of this Grant Agreement to complete the deliverables?

Financial Considerations

- Are the Subrecipient's accounting records supported by source documentation?
- Are the Subrecipient's accounting records kept in accordance with GAAP?
- Does the Subrecipient have a cost allocation plan that spreads all common costs, such as phone, rent, utilities, etc. among all funding sources?
- Does the Subrecipient have an adequate cash flow that will enable the Subrecipient to manage the finances between the time costs are incurred and reimbursed? (applicable to cost reimbursement contracts)
- Does the Subrecipient have an indirect cost rate that is approved and current? If yes, who approved the rate? Has the Subrecipient's actual indirect costs fallen below the negotiated indirect rate on previous awards?
- Is the grant/award large in terms of percentage of overall funding for the Subrecipient?
- Has the Subrecipient returned lapsed funds? Funds "lapse" when they are no longer available for obligation. Funds lapse at the end of the applicable fiscal year, unless another date is provided by statute.
- Has the Subrecipient had difficulty meeting local match requirements?
- What is the total Federal funds the Subrecipient received for the last fiscal year?
- Has the Subrecipient provided adequate supporting documentation for reimbursement requests and reporting requirements?
- What is the Subrecipient's total value of assets?
- What is the Subrecipient's total value of liabilities?
- What is the Subrecipient's total average outstanding balance of accounts receivable or payable?
- Does the Subrecipient process a large amount of cash transactions?

Internal Control Considerations

- Are staff assigned to the proposed program experienced with the funding program?
- Is the program unusually complex (e.g., program, funding, matching requirements)?
- Does the Subrecipient have effective procedures and controls in place to manage this program and is staff familiar with (Federal Awarding Agency) Manuals/ Requirements?
- Does the Subrecipient's accounting system identify the receipts and expenditures of program funds separately for each award?

- Does the Subrecipient's accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?
- Does the Subrecipient's accounting system segregate all assets, liabilities, revenue and expenditures by funding source, and produce a self-balancing report by each fund?
- Does the Subrecipient have a review process for all expenditures that provides a certainty that all costs are reasonable, allowable and allocated correctly to each funding source?
- Does the Subrecipient have sufficient internal controls in place to ensure that the accounting records are free from material misstatements?
- How many total FTEs perform accounting functions within the Subrecipient's organization?
- Does the Subrecipient have a written process or procedure for determining that critical project personnel are capable of effectively managing Federal projects?
- Does the Subrecipient have written procurement policies for consultant selection in compliance with the Brooks Act?
- Has the Subrecipient had any significant changes in key personnel or accounting systems in the last year?
- Does the Subrecipient have an active oversight committee/board and are they provided financial reports and information on a regular basis?
- Does the Subrecipient have a written process or a certification statement assuring a contractor's work will be completed in conformance with approved plans and specifications?
- Does the Subrecipient have a written policy or certification statement assuring that materials installed on the projects are sampled and tested per approved processes?
- Does the Subrecipient have a written policy or certification statement assuring that only US manufactured steel will be incorporated into the construction project?
- Is the Subrecipient's Subaward heavily regulated?
- Does the Subrecipient experience a high amount of staff turnover?
- Does the Subrecipient provide continual training to its staff?

Impact Considerations

- Could the potential of the Subrecipient's noncompliance impact the ability for the State to continue receiving the grant/award?
- Does the Subrecipient have any potential conflicts of interest in accordance with Federal Awarding Agency policy?
- Has the Subrecipient disclosed, in writing, any and all violations of Federal and/or state law involving fraud, bribery, or gratuity violations potentially affecting the award?
- Does the Subrecipient have a written policy or a certification statement assuring federal-aid projects will receive adequate inspections?
- Does the nature of the Subrecipient's work have an intense public interest and material financial risk?
- Does the Subrecipient demonstrate the ability to protect the safety, health and welfare of workers, clients, customers, suppliers, communities, tax payers, and other members of the public who are impacted by the State Agency?

Appendix E - Sample Risk Assessment Form

Any questions that remain unanswered including explanations, or the answer does not address the question asked will be assessed the highest risk rating for that question.

Name of organization: _____

Name and title of person completing this form: _____

Amount of funding requested on this application: _____

****If you have completed this form in the past twelve months, please submit your completed form with any updated information****

- 1) Please provide your total operating budget for your entity. _____
- 2) Please provide the total number of grants you receive? (State, Federal, Private)

Programmatic Performance

- 3) Total dollar amount of (agency name) only grants that you receive? _____
- 4) Has your organization administered programs similar to your current grant proposal? _____ If so, please list and explain. _____
- 5) How many years has your organization been in existence? _____
- 6) How many total FTE are there in your organization? _____
- 7) Have you previously met all deliverables of your grants on time and as described in your statement of work? _____ If not, please explain why you would unable to meet the deliverables. _____
- 8) Are you serving as a fiscal agent for another agency that will complete the actual work on the grant? ☐Yes ☐No
- 9) Are you sub-awarding any portion of this contract to complete your deliverables?
☐Yes ☐No
- 10) Has your organization had any significant changes in key personnel or accounting systems in the last year? (e.g. Controller, Executive Director, Accounting Manager, Program Manager, etc.) _____

Fiscal System

- 11) How many total FTE perform accounting functions within your organization?

- 12) When is your organization's fiscal year end? _____
- 13) DOES YOUR ORGANIZATION RECEIVE AN AUDIT UNDER THE SINGLE AUDIT ACT/UNIFORM ADMINISTRATIVE REQUIREMENTS, 2 CFR §200, SUBPART F (GOVERNMENT AUDITING STANDARDS) ☐YES ☐NO
IF YES, PLEASE PROVIDE A COPY (ELECTRONIC PREFERRED) OF YOUR MOST RECENT AUDIT REPORT.
- 14) Does your organization receive an annual financial statement audit under Generally Accepted Auditing Standards (GAAS) ☐Yes ☐No
IF YES, PLEASE PROVIDE A COPY (ELECTRONIC PREFERRED) OF YOUR MOST RECENT AUDIT REPORT.
- 15) Are your accounting records kept in accordance with GAAP? ☐Yes ☐No
- 16) Does your accounting system allow you to segregate all assets, liabilities, revenue and expenditures by funding source, and the ability to produce a self-balancing report by each fund? ☐Yes ☐No
Please explain how you intend to account for all costs and revenues associated with each funding source _____
- 17) Are accounting records supported by source documentation? If so, please provide examples of source documentation that is maintained and retained? _____
- 18) Do you have a cost allocation plan that spreads all common costs, such as phone, rent, utilities, etc. among all funding sources? ☐Yes ☐No
Please explain how you allocate your common costs. _____
- 19) Does your agency have a review process for all expenditures that will provide a certainty that all costs are reasonable, allowable and allocated correctly to each funding source? ☐Yes ☐No
Please explain your current process for reviewing costs. _____
- 20) Does your agency have sufficient internal controls in place to ensure that the accounting records are free from material misstatements? ☐Yes ☐No.
Please describe your organization's overall internal fiscal controls and structure

- 21) This contract will be a cost reimbursement basis. Does your agency have an adequate cash flow that will enable you to manage your finances between the time costs are incurred and reimbursed? ☐Yes ☐No
Please explain how you intend to cover costs prior to requesting the reimbursement. _____

- 22) Does your entity have a time and effort reporting system in place to account for 100% of all employees time with a breakdown of the actual time spent on each funding project? ☐Yes ☐No

Please explain how you intend to document actual hours worked for each employee, by each funding source. _____

- 23) DOES YOUR ORGANIZATION HAVE EMPLOYEE FIDELITY BOND/INSURANCE COVERAGE FOR ALL ITS EMPLOYEES THAT HANDLE CASH? ☐YES ☐NO
IF SO, WHAT IS THE COVERAGE AMOUNT? _____

- 24) Does your organization have an active oversight committee/board and are they provided financial reports and information on a regular basis? ☐Yes ☐No

** Please retain this completed form in your records for any additional funding applications within a twelve month period**

Please Sign and Date Below:

Executive Director (or authorized deligee)
Signature

Date

Financial Director Signature

Date